

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

MYRTIS PAULO HART,

Plaintiff,

vs.

No. CV 21-01107 MV/KRS

WALMART,  
et al.,

Defendants.

**ORDER TO CURE DEFICIENCIES**

THIS MATTER is before the Court on the pro se complaint filed by Myrtis Paulo Hart. (Doc. 1). The Court determines that the pro se filing is deficient because it is not in proper form, and Plaintiff has not paid the \$402 filing fee or filed an Application to Proceed in the District Court Without Prepaying Fees and Costs in proper form.

Plaintiff is a prisoner incarcerated at the Curry County Adult Detention Center and is proceeding pro se. (Doc. 1). Plaintiff's filing consists of a Federal Tort Claims Act form alleging discrimination and violation of his rights. (Doc. 1 at 1). Plaintiff's filing appears to be an attempt to assert prisoner civil rights claims under 42 U.S.C. § 1983 or *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). A civil rights complaint under 42 U.S.C. § 1983 or *Bivens* is the exclusive vehicle for vindication of substantive rights under the Constitution. See, *Baker v. McCollan*, 443 U.S. 137, 144 n. 3 (1979); *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (claims against state actors must be brought under 42 U.S.C. § 1983).

The filing is not in proper form to assert civil rights claims and is not signed as required by Fed. R. Civ. P. 11(a). In addition, under 28 U.S.C. §§ 1914(a) and 1915(a), the Court is required to collect the federal filing fee from the Plaintiff or authorize Plaintiff to proceed without prepayment of the fee. Plaintiff has not paid the \$402.00 filing fee or submitted an application to proceed under § 1915 in proper form.

Plaintiff must cure the deficiencies if he wishes to pursue his claims. The deficiencies must be cured within thirty (30) days of entry of this Order. Plaintiff must include the civil action number, CV 21-01107 MV/KRS on all papers he files in this proceeding. If Plaintiff fails to cure the deficiencies within thirty (30) days, the Court may dismiss this proceeding or strike the complaint under Fed. R. Civ. P. 11(a) without further notice.

**IT IS ORDERED** that, within thirty (30) days of entry of this Order, Plaintiff Myrtis Paulo Hart cure the deficiencies by (1) paying the \$402 filing fee or submitting an Application to Proceed in the District Court Without Prepaying Fees and Costs (including the required 6-month inmate account statement) and (2) filing a prisoner civil rights complaint in proper form.

**IT IS FURTHER ORDERED** that the Clerk of the Court is directed to mail to Plaintiff, together with a copy of this order, (1) two copies of an Application to Proceed in the District Court without Prepaying Fees and Costs under 28 U.S.C. § 1915, with instructions, and (2) a form prisoner civil rights complaint under 42 U.S.C. § 1983, with instructions.

A handwritten signature in black ink, appearing to read "Kevin Smeagala", is written over a horizontal line.

UNITED STATES MAGISTRATE JUDGE